IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1559 OF 2005.

Ashok Dagadu Satkar & others. ... Appellants.
Versus.
Smt.Yashodabai Savlaram Satkar & anr. ... Respondents.

Shri D.S.Sawant for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 17th MARCH, 2006.

P.C.:

1. Heard Shri Sawant appearing for the Appellants.

The Appellants are the original Defendants.

2. Shri Sawant appearing for the Appellants has taken me through the findings recorded by the trial Court as well as the Appellate court on the issue relating to the existence of marriage between Respondent No.1 (original Plaintiff) and the deceased Savalaram. He submitted that the fact that Respondent No.1 was required to file a suit for a declaration regarding her status as the wife of Savalaram during the life time of Savalaram shows that even during the life time of Savalaram he had not accepted Respondent No.1 as his wife. He pointed out that the evidence on record shows that necessary religious ceremonies were also not performed in the alleged marriage between the Respondent No.1 and the deceased Savalaram. He submitted that the finding recorded by the Appellate Court on this aspect is perverse. He lastly submitted that the suit filed by

Respondent No.1 being a suit simplicitor for injunction, the trial Court and the Appellate court committed an error by granting perpetual injunction.

3. I have considered the submissions. The findings recorded by the Appellate Court show that the entire oral and documentary evidence on record has been considered. The Appellate Court has considered the fact that during the lifetime of Savalaram, Respondent No.1 applied for maintenance against the deceased Savalaram. The Appellate Court has referred to the entries in the voters list right from the year 1983 which show that Respondent No.1 has been shown as wife of Savalaram. Though the Appellate Court has found that some of the religious ceremonies required for marriage were not performed, still there is evidence on record to show that some ceremony was performed on 28th March 1969.

4. The Appellate Court has also noted that in the written statement of the Appellants, there was no specific denial of the fact that Respondent No.1 resided with the deceased Savalarm as his wife till his death. The Appellants have claimed that Savalaram has performed marriage with one Sulabai who left Savalaram after residing with him for some time. The Appellate Court has noted that the Appellants have failed to examine the said Sulabai as a witness. The Appellate Court has noted certain admissions of witness No.1 examined by the

Appellants in his cross-examination.

5. It is pertinent to note that the Appellants had set up a will of deceased Savalaram and had contended that by the said Will a bequest was made in favour of Appellant No.1. However, the Appellants could not establish the said will as none of the attesting witnesses were examined.

6. Considering all these factors, a finding of fact has been recorded that Respondent No.1 was wife of deceased Savalaram. It is impossible to interfere with the said finding of fact which is based on appreciation of evidence. Once there exists such a finding, it is obvious that after the demise of Savalaram, the Appellants cannot claim any right, title and interest in the properties exclusively belonging to Savalaram. There is no merit in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.